U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19825395

Date: JAN. 24, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an information technology specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. However, the Director concluded that the record does not establish that the Petitioner's endeavor has national importance. The Director also concluded the record did not satisfy the third *Dhanasar* prong. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as:

> [A] career plan . . . to use the knowledge I have acquired in the [i]nformation [t]echnology field to work on large scale projects in the United States that involve complex [i]nformation [t]echnology [s]ystems. I am capable of developing, implementing, and managing all activities for such projects. I plan to continue using my intimate knowledge of information technology to directly help companies in the U.S. with their computer and information technology systems. I have extensive experience in the development of projects and integrated solutions in the context of management and optimization of IT processes. I intend to continue utilizing my exceptional expertise in the field of IT as an IT [s]pecialist, thus providing expert technological services to U.S. companies that require my unique skillset.

In response to the Director's request for evidence (RFE), the Petitioner further stated that he "intends to offer his services for companies as an in-house [*sic*] in the [l]ocation he is needed. These companies may be any size organizations from small to large with constant need of perfecting their systems application [*sic*] like [h]ospitals, [i]ndustries, [l]ogistics like Amazon and [o]nline medias [*sic*] like Facebook and Google."

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that "the [P]etitioner has not shown his proposed endeavor in this case stands to sufficiently extend beyond an organization or its clients or the individuals [he] would serve to impact the industry or field more broadly."

On appeal, the Petitioner asserts that the Director erred by "looking for national importance solely in geographic terms," that four support letters satisfy the first *Dhanasar* prong, and that his "mainly past achievements" and qualifications satisfy the national importance criterion.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The proposed endeavor of providing generalized information technology services to a company or companies benefits those companies and clients. However, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner's employer and clients, as contemplated by the first *Dhanasar* prong. *See id.* at 889. For example, the Petitioner specified that he would "offer his services for companies as an in-house [*sic*]," without elaborating on how providing services for a specific employer would have broader implications to rise to the level of national importance. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361

The Petitioner mischaracterizes the Director's decision as "looking for national importance solely in geographic terms." On the contrary, the Director explained that the Petitioner's discussion of "the field of the proposed endeavor," rather than the particular endeavor itself, "failed to establish how the specifically proposed endeavor would prospectively have national importance." The Director also observed that the record did not establish "how the [P]etitioner, by offering his IT services to individual companies, would result in broad benefits on [a] national scale." The Director's decision does not purport that the proposed endeavor may otherwise have national importance, but for any geographic limitation. Despite the Petitioner's characterization, the Director specifically noted in the first criterion analysis that "the record failed to establish that the proposed endeavor has a potential to employ a significant number of workers *anywhere in the U.S.*" (emphasis added).

Next, the support letters do not address how the "specific endeavor that the foreign national proposes to undertake," *see Dhanasar*, 26 I&N Dec. at 889, may have national importance. Instead, they address what the authors describe as "[h]is substantial and broad history of remarkable accomplishments," "[h]is track record of exceptional achievements," "[h]is history of accomplishments," and "[h]is comprehensive history of significant accomplishments," respectively.[3] The letter authors' discussion of the Petitioner's prior accomplishments are material to the second *Dhanasar* prong—whether a petitioner is well-positioned to advance a proposed endeavor—not material to the first prong—whether a proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

Similar to the support letters, although the Petitioner's "mainly past achievements" and qualifications referenced on appeal are material to the second *Dhanasar* prong, they are not material to whether the specific endeavor may have national importance. We first note that the Petitioner's references to a company he founded in 2019, both on appeal and in response to the RFE, are misplaced. The Petitioner explains that he merely "registered" the company in 2018 and was "unable to perform any activities until March 2019, when I [was] granted the employment authorization." The instant petition filing date was December 2018. A petitioner must establish eligibility at the time of filing a nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec.

[3] Although we discuss only examples of each of the letters' content for brevity, we have reviewed the record in its entirety.

248 (Reg'l Comm'r 1978). Accordingly, the "activities" the Petitioner performed in 2019 and thereafter may not establish eligibility at the time of filing in 2018. Furthermore, the Petitioner specifically described the proposed endeavor as working "in-house" for a company, not founding his own company and seeking to employ a staff of workers. Therefore, even if the Petitioner had "performed any activities" as of the petition filing date under the auspices of the company he founded, that would present a new set of facts that would be inconsistent with the specific endeavor the Petitioner stated he would pursue. *See id.*

As discussed above, the Petitioner's other references on appeal to his "mainly past achievements" while working for various firms between 2008 and 2010, 2010 and 2012, and 2012 and 2017,[4] respectively, do not address how the prospective "specific endeavor that the foreign national proposes to undertake" may have national importance. *See Dhanasar*, 26 I&N Dec. at 889. For similar reasons, although the Petitioner's references on appeal to his past education and information technology certifications are material to the second *Dhanasar* prong, they do not address how the prospective endeavor may have national importance.[5]

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] Similarly, the Petitioner's receipt of awards for "exceed[ing] expectations" in 2016 and 2017 does not address the prospective endeavor and how it may rise to the level of national importance.

[5] We also note that, again, the Petitioner's references to certifications received after the petition filing date may not establish eligibility, even to the extent that they are material. 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. 248.